
United States
Circuit Court of Appeals
For the Ninth Circuit.

FRANK BOGART,

Appellant

vs.

MILLER LAND and LIVESTOCK COMPANY,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Montana.

FILED

NOV 1 - 1941

PAUL P. O'BRIEN,

NO. 9946

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRANK BOGART,

Appellant

vs.

MILLER LAND and LIVESTOCK COMPANY,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Montana.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer and Cross Petition of Debtor to Petition to Show Cause.....	62
Appeal:	
Designation of Contents of Record on (Circuit Court of Appeals).....	82
Designation of Contents of Record on (District Court)	77
Notice of	74
Statement of Points on (Circuit Court of Appeals)	82
Statement of Points on (District Court).....	75
Attorneys, names and addresses.....	1
Caption	1
Certificate of Clerk to Transcript of Record.....	80
Claim of Frank Bogart, Creditor.....	13
Clerk's Certificate to Transcript on Appeal.....	82
Cross Petition of Debtor.....	66
Designation of Portions of Record on Appeal (Circuit Court of Appeals).....	82
Designation of Portions of Record on Appeal (District Court)	77

	Page
Names and addresses of attorneys.....	1
Notice of Appeal.....	74
Objections of Creditor to reduction of rate of interest on claim of Frank Bogart.....	73
Order Approving Claim of Creditor, Frank Bogart	49
Order Approving Debtor's Proposal.....	44
Order Denying Petition for leave to foreclose mortgage	49
Order requiring debtor to show cause.....	61
Order requiring Frank Bogart to show cause on Debtor's Cross Petition.....	72
Order reducing interest rate on Bogart Claim.....	74
Order that payment made by Debtor should have been 10% of principal and interest of Bogart claim at time of payment	60
Petition, Cross, of Debtor.....	66
Petition of Creditor for order directing debtor to pay balance due.....	59
Petition of Creditor for order to show cause.....	50
Proposal of Debtor.....	2
Return to order to show cause.....	52
Statement of Points on Appeal (Circuit Court of Appeals)	82
Statement of Points on Appeal (District Court)	75

NAMES AND ADDRESSES OF ATTORNEYS:

C. LIEBERT CRUM, Esq.,

Parkman, Wyoming,

Attorney for Debtor, and Appellee.

MESSRS. GUNN, RASCH & GUNN,

Helena, Montana,

Attorneys for Frank Bogart, Creditor, and

Appellant. [1*]

In the District Court of the United States in and
for the District of Montana.

Billings Division.

Case No. 3406.

In the Matter of MILLER LAND AND LIVE-
STOCK COMPANY,

Debtor.

Be It Remembered that on June 7, 1938, there was filed before the Honorable D. L. Egnew, Conciliation Commissioner for Big Horn County, Montana, in the above entitled matter, a Proposal under Section 75 of the Bankruptcy Act as amended, by the debtor in the above entitled matter, which proposal is in the words and figures following, to wit:

[2]

*Page numbering appearing at foot of page of original certified Transcript of Record.

EXHIBIT #2

12-15-1938

In the District Court of the United States for the
District of Montana
(Billings Division)

Before the Honorable D. L. Egnew, Conciliation
Commissioner in and for the County of Big Horn,
State of Montana.

In the Matter of
MILLER LAND AND LIVESTOCK COMPANY,
Farm Debtor.

PROPOSAL

Debtor proposes to pay all creditors in full. All it asks is a relatively short time to bring about an orderly liquidation of certain assets and an opportunity to continue its operations for a time free of vexatious and expensive litigation. In order to do so, debtor proposes to its secured creditors that it continue to possess, farm and care for its property, including livestock, according to good farming, ranching, and livestock practices and under the supervision of the Court and hereby offers and agrees so to do and out of the proceeds of each year's operation, take out and pay: First, the prudent and necessary cost of production of crops and of operation and maintenance of farm, ranch, and livestock; second, an amount sufficient to pay and to pay at least one year's taxes on all encumbered property;

third, to pay over and account to the Conciliation Commissioner, commencing with the year 1938, such net income on or before December 1st each year, which such net income debtor estimates, from past production will, during the next three years, average, as more fully appears by the schedules hereto attached, at least \$150,000.00 per year, such income to be apportioned and paid over to the several secured creditors to the full amount of their allowed claims, with interest, and in accordance with such priorities, equities, and prorations as may be agreed upon by the creditors or determined by the Conciliation Commissioner or the Court to be just and in accordance with what the interests of the various secured creditors may be; (unpaid balances to bear interest at the existing contract rate); it being the intention and proposal of the debtor to apply on such payments all income over and above the reasonable and necessary cost of operation of the farm, ranch, equipment, livestock, and taxes, and to pay each creditor in full as soon as possible and that in case the application of such income does not pay within three years the amount of said debt, with interest as contracted for, that debtor will, before the expiration of three years from the acceptance and approval of this proposal, refinance such remaining amount by securing a loan or loans or disposing of property under the supervision of the Court, or both, sufficient to complete such payments.

All the property to be managed under the supervision of the Court and the present President and

Manager of said debtor corporation, by executing this Proposal, hereby agrees to accept such responsibility and management and to serve under the general supervision of the Court without payment of wages or salary to himself for such management, but providing that he receive such reimbursement for expenses as he may necessarily incur in carrying out such duties.

In order that the plan of operation for 1938 be specified more in detail, the schedule hereunto annexed and marked "Schedule A" is a statement of the existing, unencumbered crops now growing upon the property of the debtor, and the probable returns therefrom. [3]

The hereunto annexed schedule marked "Schedule B" is the proposed plan of handling and marketing the livestock, mortgaged and unmortgaged.

The hereunto annexed schedule marked "Schedule C" is a proposed plan of liquidating certain other secured claims on real estate.

It is proposed further that the payments made to any secured creditor during any one year shall be not less than an amount equal to a reasonable and customary rental upon the property upon which such creditors hold security, or at the option of the several creditors, a payment equal to 10% of the debt, and that there be established and maintained out of any net income in excess of an amount necessary to make such minimum required payments as above proposed, a revolving fund of \$40,000.00 for operating expenses, to be used under the supervision

of the Court, and in general accordance with "Schedule D", hereunto annexed.

Debtor proposes to the unsecured creditors that it continue its operations in general accordance with the terms of the proposal heretofore stated and that out of the net proceeds of such operations or proceeds of sales or loans secured, that less than 12 months after the secured creditors have been paid in full, as above proposed, that it pay to such several unsecured creditors 100% of their allowed claims with interest at the rate of 5% *per cent* per annum.

Inasmuch as debtor proposes that its operations be conducted under the supervision of the Court, it offers and agrees to pay as much of the cost of such supervision as it is allowed by the law to pay, which debtor understands to be 50% and agrees that the Court may fix such compensation at any reasonable amount. Debtor suggests that \$..... per month would be a reasonable amount to pay for such supervision.

Debtor proposes and has pending in this Court, a petition to secure temporary working capital of \$40,000.00 or so much thereof as may be necessary by pledging its growing crops until the same may be marketed.

This proposal is made on behalf of said debtor, pursuant to and as authorized by the Board of Directors of said Corporation at a special meeting of such Directors held at the office of said debtor Corporation at Parkman, Wyoming, May 31st, 1938.

The foregoing proposal is believed by the debtor

to be a fair, equitable, and feasible plan of liquidation of its debts and that its operation will result in the rehabilitation of the debtor, but during the entire proceeding, intends to and will consider any and all reasonable suggestions of any creditor that may tend to better accomplish such results. Debtor tenders and asks for all reasonable cooperation in this proceeding to carry out the intent of the law governing this proceeding.

Wherefore, debtor prays that this proposal be considered by the creditors and, if approved according to law, that such further proceedings may be had as are proper.

MILLER LAND AND LIVESTOCK COMPANY, A Corporation

By C. E. MILLER, JR.,

[Corporate Seal] President [4]

SCHEDULE "A"

Crop and Feed Inventory

On Hand:

Approximately	1,000 tons	Hay
“	3,000 bu.	Barley
“	50,000 lb.	Alfalfa Seed in Stack

Drilled in:

Approximately	5,000 acres	Winter	Wheat—excellent condition
“	500 “	Spring	Wheat—excellent condition
“	2,000 “	Barley	—excellent condition
“	600 “	Sugar Beets	(Share Basis)—excellent condition
“	4,000 “	Hay, mixed	—excellent condition

Sufficient pasture land at Home Ranch to carry 6,000 head of cattle.

Estimated Income:

5,500 acres Wheat, 25 bu. per acre—137,500 bu.	
at 70¢	\$ 96,250.00
2,000 “ Barley, 35 bu. per acre—70,000 bu.	
at 50¢	35,000.00
600 “ Sugar Beets—net \$12.00 per acre	7,200.00
Soil Conservation payment (estimated)	10,000.00
7,000 tons Hay at \$4.00 per ton	28,000.00
600 acres Beet Tops at \$3.00 per acre	1,800.00

Total Estimated Gross Crop Income: \$178,250.00

All of the above is free and clear of encumbrance. Inasmuch as 2,000 acres of winter wheat is nurse crop to 2,000 acres, new alfalfa and hay land for 1939 will be about the same as 1938.

Beet contract calls for planting of 2500 acres for 1939 (all cost carried by contractors).

Schedule of Operation—1939

2500 acres Sugar Beets*
4000 “ Hay
5700 “ Grain

*1940 program provides for 3500 acres of sugar beets, per contract.

[5]

SCHEDULE “B”

Livestock

(Inventory as of June 1, 1938)

Our and Others:

550 cows and calves estimated at	\$65.00	\$35,750.00
335 dry cows	“ “	55.00 18,425.00
233 2-yr. old steers	“ “	40.00 9,320.00
28 “ “ heifers	“ “	35.00 980.00
50 4-yr. old steers	“ “	80.00 4,000.00

1196

\$ 68,475.00

Aberdeen Angus:

800 cows and calves, estimated at	\$ 70.00	\$56,000.00
1156 dry cows, bred, estimated at	55.00	63,530.00
400 2-yr. old steers, " "	45.00	18,000.00
373 " " heifers " "	40.00	14,920.00
400 yearling heifers " "	50.00	12,000.00
400 " steers " "	35.00	14,000.00
166 black bulls " "	100.00	16,600.00
<hr/>		
3695		195,050.00

2 A Cattle:

75 mixed cattle estimated at	\$50.00	3,750.00
------------------------------	---------	----------

Estimated Total Cattle Value: \$267,275.00

Cattle sold to which we hold title:

E. C. Woodley

200 cows, some calves)	\$6,300.00
------------------------	------------

200 yearlings)	Balance due 12/1/38
-----------------	---------------------

Paul Workman

2 bulls)	
-----------	--

107 cows, some calves)	5,666.76
------------------------	----------

82 yearlings)	Balance due 12/1/38
----------------	---------------------

Walter Bales, Jr.

60 cows and calves)	3,730.00
----------------------	----------

2 bulls)	Balance due 12/1/38
-----------	---------------------

2 saddle horses)	
-------------------	--

Estimated accrued interest on balance due	450.00	\$ 16,146.76
---	--------	--------------

Estimated Total Cattle Value and Balance

Due From Sales: 283,421.76

4966 head of cattle, plus approximately 1600 calves, now on property owned or leased by Miller Land & Livestock Company.

Horses	\$ 27,000.00
--------	--------------

Chickens and Hogs	1,000.00
-------------------	----------

Estimated Total Livestock Inventory Value: \$311,421.76

Program for 1938

To maintain proper breeding herd to utilize feed produced, would recommend the following sales, Fall of 1938:

300 cows estimated at \$40.00	\$12,000.00
700 dry cows estimated at \$60.00	42,000.00
50 4-yr. old steers estimated at \$90	4,500.00
50 bulls estimated at \$60.00	3,000.00

Estimated Proceeds From Fall, 1938 Sales:	\$ 61,500.00
Cattle Sale Notes:	16,146.76
Horses—200—estimated at \$50.00	<u>10,000.00</u>

Estimated Proceeds From Proposed Livestock Sales; Fall, 1938, Including Balance Due on Cattle Already Sold:	\$ 87,646.76
---	--------------

[6]

Such proposed selling program would leave the following cattle on the property of the Miller Land and Livestock Co. as a breeding herd:

633 long 2-yr. olds estimated at \$60.00	\$ 37,980.00
2200 cows estimated at \$55.00	121,000.00
2200 calves estimated at \$25.00	55,000.00
400 long 3-yr. old steers estimated at \$45	18,000.00
400 long 3-yr. old heifers " " \$40	16,000.00
116 bulls estimated at \$100.00	<u>11,600.00</u>
Total Estimated Value:	<u><u>\$259,580.00</u></u>

However, in the event that projected inventory prices can be obtained for all calves, yearlings, and two-year old steers, we would recommend selling them also in the Fall of 1938. This would enable debtor to pay all cattle indebtedness in the Fall of 1938. [7]

SCHEDULE "C"

REAL ESTATE

Property now owned valued at \$2,500,000.00

Debtor proposes to sell the following real estate: Dayton Ranch, consisting of 837.5 acres, more or less, and lots in Town of Dayton, legal description as follows:

S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, Section 19; SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 20, NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ except that part as platted in Town of Dayton, Section 29; NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 30, Township 57 North, Range 86 West, containing 837.5 acres, more or less, according to U.S. Government Survey; also

Lots 1 and 2, Block 1; Lots 1 to 6 inc., 11 and 12, Block 2; Lots 1 to 7, inc., and 9 to 12, inc., Block 3, Dinwiddie Addition to the Town of Dayton, Sheridan County, Wyoming.

The above mentioned property is to be sold at a price of \$100,000.00 on the following terms:

Purchaser to pay \$5,000.00 now, \$5,000.00 December 1, 1938, and \$7,500.00 per year until the balance is fully paid, unpaid balance to draw interest at the rate of 4 per cent per annum. Purchaser further agrees to obtain full release of debtor of first mortgage on property, or to replace same, for the amount of \$21,862.50. This would mean that debtor would realize full \$10,000.00 on said property before December 1, 1938. Balance due debtor would be secured by a second mortgage.

T R Ranch, consisting of approximately 4500.00 acres, more or less, legal description as follows:

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Section 13; E $\frac{1}{2}$ NE $\frac{1}{4}$, Section 23; N $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 24; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 25; SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35; N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 36, Township 58 North, Range 89 West, containing approximately 4500.00 acres, more or less, according to U. S. Government Survey.

The above mentioned property, debtor proposes to sell at a price of \$300,000.00, terms 10% down with the balance over a period of 10 years, drawing interest at the rate of 4 per cent per annum. [8]

SCHEDULE "D"

Operating Expense

Budget to December 1, 1938 (Estimated):

Leases	\$ 5,000.00
Labor	9,600.00
Provisions	1,200.00
Repairs	500.00
Fuel	150.00
Taxes*
Tractor Fuel, Gas & Oil	5,000.00
Equipment	10,000.00
	<hr/>
Total	\$31,450.00

*1937 taxes and current 1938 taxes to be adjusted and added to total shown above.

Budget, Year 1939 (Estimated):

Leases	\$ 5,000.00
Labor	15,000.00
Provisions	1,800.00
Repairs	1,000.00
Salt	250.00
Fuel	250.00
Taxes	4,400.00
Tractor, Fuel, Gas & Oil	8,000.00
*Reserve for Misc. Expense	4,300.00
	<hr/>
Total	\$40,000.00

*This item includes general maintenance of building, necessary travel expense, clerical and general office expense, necessary truck and car licenses and permits, etc., which cannot be estimated with reasonable accuracy.

[Endorsed]: Filed June 7, 1938, before D. L. Egnew, Conciliation Commissioner. [9]

Thereafter, on June 7, 1938, Claim of Frank Bogart, Creditor, was filed with the Conciliation Commissioner in the above entitled matter, which claim is in the words and figures following, to wit: [10]

[Title of District Court and Cause.]

CREDITOR'S CLAIM

United States of America,
District of Montana—ss.

Frank Bogart, being first duly sworn, deposes and says:

That at the time of the filing of the petition by the debtor herein, he was, and is now, the owner and holder of and asserts a claim against the property of the debtor, as follows:

That on the 29th day of September, 1919, Edwin L. Dana and Fra M. Dana, his wife, made and delivered their four promissory notes, each for the sum of \$50,000.00 and bearing interest at the rate of 7% per annum, and payable on the 1st day of October, 1924, to one Samuel McKennan, and amounting in the aggregate to the sum of \$200,000.0 amounting in the aggregate to the sum of \$200,000.00, and, to secure the payment of said notes, on the same day executed, acknowledged and delivered to said Samuel McKennan a mortgage on lands, water rights, etc. in Sheridan County, Wyoming, which was recorded in the office of the County Clerk of Sheridan County, Wyoming on the 1st day of October, 1919, and a copy of which is hereto attached, marked Exhibit "A" and made a part hereof.

To further secure the payment of said promissory notes, the said E. L. Dana and Fra M. Dana, his wife, on the 29th day of September, 1919, executed, acknowledged and delivered to the said Samuel McKennan, a mortgage on lands, water rights,

etc. in Big Horn County, Montana, which was recorded in the office of the County Clerk and Recorder of Big Horn County, Montana, on the [11] 16th day of October, 1919, and a copy of which is hereto attached, marked Exhibit "B" and made a part hereof.

That thereafter and in the year 1926 there was released from the lien of said mortgage made a part hereof as Exhibit "A", by an instrument in writing executed for that purpose, Lots One (1) and Two (2) and the South Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section Fourteen (14), and the Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$) of Section Twenty-three (23), in Township Fifty-eight (58) North of Range Eighty-nine (89) West, Sheridan County, Wyoming, and the said E. L. Dana and Fra M. Dana, his wife, in consideration of such release and as further security for the payment of said promissory notes, executed, acknowledged, and delivered to the said Samuel McKennan a mortgage upon certain lands, with the appurtenances, in Sheridan County, Wyoming, which mortgage was recorded in the office of the County Clerk of Sheridan County, Wyoming, on the 11th day of October, 1926, and a copy of which is hereto attached, marked Exhibit "C", and made a part hereof.

That one of said notes for the sum of \$50,000.00, with the interest thereon, has been fully paid and there is now due and owing on said indebtedness

evidenced by said promissory notes the sum of \$150,000.00, with interest thereon at the rate of 6% per annum from the 1st day of October, 1937. That the three promissory notes evidencing said indebtedness unpaid are each, except as to their numbers, which are One, Two and Four respectively in the words and figures following:

United States of America

Number	First	Dollars
One	Mortgage Note.	50,000.00

Secured By
Real Estate [12]

Helena, Montana, September 29th, 1919

On the first day of October, A. D. 1924 for value received I promise to pay to the order of Samuel McKennan at Union Bank and Trust Company, Helena, Montana, the principal sum of Fifty Thousand Dollars, with exchange on New York with interest thereon at the rate of seven per cent per annum from date until maturity, payable semi-annually according to the tenor of ten interest notes, annexed hereto and bearing even date herewith, both principal and interest to be paid in gold coin of the United States of the present standard of weight and fineness. If default be made in the payment of any interest note or any portion thereof at the time the same becomes due and payable, then said principal and accrued interest shall, at the option

of the legal owners thereof, become at once due and payable without further notice, with interest thereafter, at the rate of seven per cent per annum until paid.

This note shall bear interest at seven per cent per annum, after maturity, until fully paid. This note and interest notes annexed are secured by a First Mortgage Deed duly recorded in Sheridan County, State of Wyoming.

EDWIN L. DANA

FRA M. DANA

The makers hereof have the privilege of paying this note or any portion thereof, on any interest payment date, on or after October 1st, 1920.

(\$10.00 of U. S. Internal Revenue stamps attached—cancelled.)

That said notes were made and delivered and said mortgages given as security therefore by the said E. L. Dana and Fra M. Dana, his wife, in consideration of the loan of \$200,000.00 made to them at the time of the delivery of said notes and mortgages attached hereto as Exhibits "A" and "B". [13]

That on the 11th day of October, 1919, the said Samuel McKennan endorsed, assigned and transferred to this affiant all of said promissory notes, and this affiant is now and ever since has been the owner and holder of said three promissory notes unpaid as aforesaid.

That on said 11th day of October, 1919, the said Samuel McKennan further assigned and transferred to this affiant the said mortgage on lands in Big

Horn County, Montana, a copy of which is attached hereto as Exhibit "B", together with the obligations secured thereby and the money due and to become due thereon, with interest, by an instrument in writing duly executed and acknowledged by him and recorded in the office of the County Clerk and Recorder of Big Horn County, Montana, on the 20th day of March, 1934, in Book 18 of Mortgages, at page 467; and on the same day duly assigned and transferred to this affiant the mortgage on lands in Sheridan County, Wyoming, made a part hereof as Exhibit "A", together with the promissory notes secured thereby, by an instrument in writing duly executed and acknowledged by him, which was recorded in the office of the County Clerk of Sheridan County, Wyoming, on the 16th day of March, 1934, in Book 37 of Mortgages, at page 205. That this affiant is now and has been ever since the 11th day of October, 1919, the owner and holder of both of said mortgages and the promissory notes secured thereby.

That on the 20th day of October, 1932, and within eight years and sixty days after the maturity of said promissory notes, the said Samuel McKennan made his certain affidavit for the purpose of renewing and extending the said mortgage of lands in Big Horn County, Montana, setting forth the date of said mortgage, when and where recorded, the amount of the debt secured thereby and the amount remaining unpaid, to-wit, the sum of \$150,000.00, with interest from the 1st day of October, 1931, [14] at

the rate of 7% per annum, and stating that said mortgage was not renewed for the purpose of hindering, delaying or defrauding creditors of the mortgagors or the owners of the lands described therein, which affidavit was filed for record in the office of the County Clerk and Recorder of Big Horn County, Montana, on the 22nd day of October, 1932, and recorded in said office in Book 18 of Mortgages, at page 162.

That the said mortgage dated the 21st day of July, 1926, and a copy of which is made a part hereof as Exhibit "C", thru error designated said Samuel McKennan as mortgagee, whereas said mortgage should have designated this affiant as mortgagee and this affiant is, in fact, the owner and holder of said mortgage.

That on or about the 1st day of October, 1933, this affiant agreed with the makers of said notes, to-wit: E. L. Dana and Fra M. Dana, his wife, to reduce the rate of interest on said notes to 6% per annum.

That the interest on said three promissory notes has been paid to the 1st day of October, 1937, on which date the sum of \$1500.00 was paid as interest upon each of said promissory notes.

That there are no set-offs to or counter-claims against said indebtedness and there never has been any judgment rendered thereon or any part thereof.

That as affiant is informed, believes and states all of the lands and property embraced in and described in said mortgages has been transferred and con-

veyed to the debtor, who now claims to be the owner thereof.

FRANK BOGART

Subscribed and sworn to before me this 5th day of May, 1938.

A. A. MAJOR

Notary Public for the State of Montana residing at Helena, Montana.

My commission expires Feb. 28, 1940.

(Notarial Seal) [15]

EXHIBIT "A"

This Deed, made this 29th day of September in the year of our Lord One Thousand Nine Hundred Nineteen, between Edwin L. Dana (who received title to some of the lands hereinafter described, as E. L. Dana) and Fra M. Dana, his wife, of the County of Sheridan, in the State of Wyoming, parties of the first part, and Samuel McKennan of Lewis and Clark County, State of Montana, party of the second part,

Witnesseth, That said parties of the first part, for and in consideration of the sum of Two Hundred Thousand Dollars, to them in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto said party of the second part, and unto his heirs, executors, administrators and assigns forever, all those pieces or parcels of land, situate, lying and being in the

County of Sheridan, and State of Wyoming, more particularly described as follows:—

North half ($N\frac{1}{2}$), Southwest quarter ($SW\frac{1}{4}$) and West Half of Southeast quarter ($W\frac{1}{2}SE\frac{1}{4}$) of Section Three (3); all of Section Four (4); all of Section Five (5); all of Section Six (6); Northeast Quarter of Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$) and Lots One (1), Two (2) and Three (3), East half of Northeast quarter ($E\frac{1}{2}NE\frac{1}{4}$), Northeast Quarter of Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) and all that portion of the Southwest quarter of Northeast quarter ($SW\frac{1}{4}NE\frac{1}{4}$), Northwest quarter of Southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$) and Southeast quarter of Southeast quarter ($SE\frac{1}{4}SE\frac{1}{4}$) lying east of the County Road as now constructed thru said land, all in Section Seven (7); Northwest quarter ($NW\frac{1}{4}$) of Section Eight (8); and Northeast quarter ($NE\frac{1}{4}$) of Section Nine (9); all in Township Fifty-seven (57) North, Range Eighty-seven (87) West, Wyoming Meridian;

South Half of Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$) and South half of Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section One (1); North half ($N\frac{1}{2}$) and Northeast quarter of Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) of Section Twelve (12); all in Township Fifty-seven (57) North, Range Eighty-eight (88) West, Wyoming Meridian;

South half of Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) (or Lots 5 & 6), Southwest quarter ($SW\frac{1}{4}$)

or Lots 2, 3 & 4) in Section Fifteen (15); Southeast quarter of Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$) (or Lot 6), Southwest quarter ($SW\frac{1}{4}$) (or Lots 2, 3, & 4) of Section Seventeen (17); South Half ($S\frac{1}{2}$) (or Lots 1, 2, 3, 4, 5, & 6) of Section Eighteen (18); all of Section Nineteen (19); Northeast quarter of Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$), Southwest quarter of Northeast quarter ($SW\frac{1}{4}NE\frac{1}{4}$), Northwest quarter of Northwest quarter ($NW\frac{1}{4}NW\frac{1}{4}$), South half of Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$), and South half ($S\frac{1}{2}$) of Section Twenty [16] (20); Northeast quarter ($NE\frac{1}{4}$), North half of Northwest quarter ($N\frac{1}{2}NW\frac{1}{4}$), Southeast quarter of Northwest quarter ($SE\frac{1}{4}NW\frac{1}{4}$), Southwest quarter ($SW\frac{1}{4}$) and North Half of Southeast quarter ($N\frac{1}{2}SE\frac{1}{4}$) of Section Twenty-one (21); West half of Northeast quarter ($W\frac{1}{2}NE\frac{1}{4}$), Northwest quarter ($NW\frac{1}{4}$), North half of Southwest quarter ($N\frac{1}{2}SW\frac{1}{4}$) and West half of Southeast quarter ($W\frac{1}{2}SE\frac{1}{4}$) of Section Twenty-two (22); Northeast quarter ($NE\frac{1}{4}$), South half of Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$) and South half ($S\frac{1}{2}$) of Section Twenty-seven (27); West half of Northeast quarter ($W\frac{1}{2}NE\frac{1}{4}$), Northwest quarter ($NW\frac{1}{4}$) and East half of Southeast quarter ($E\frac{1}{2}SE\frac{1}{4}$) of Section Twenty-eight (28); Northeast quarter ($NE\frac{1}{4}$), Northwest quarter of Northwest quarter ($NW\frac{1}{4}NW\frac{1}{4}$), South half of Northwest quar-

ter ($S\frac{1}{2}NW\frac{1}{4}$) and South half ($S\frac{1}{2}$) of Section Twenty-nine (29); North half ($N\frac{1}{2}$), North Half of Southeast quarter ($N\frac{1}{2}SE\frac{1}{4}$) and North half of Southwest quarter ($N\frac{1}{2}SW\frac{1}{4}$) of Section Thirty (30); South half of Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$), South half of Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$) and South half ($S\frac{1}{2}$) of Section Thirty-one (31); Northeast quarter ($NE\frac{1}{4}$), North half of Northwest quarter ($N\frac{1}{2}NW\frac{1}{4}$), Southeast quarter of Northwest quarter ($SE\frac{1}{4}NW\frac{1}{4}$), Northwest quarter of Southwest quarter ($NW\frac{1}{4}SW\frac{1}{4}$) and South half of Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) and Southeast quarter ($SE\frac{1}{4}$) of Section Thirty-two (32); all of Section Thirty-three (33); Northwest quarter of Northeast quarter ($NW\frac{1}{4}NE\frac{1}{4}$), South half of Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$), Northwest quarter ($NW\frac{1}{4}$) and South half ($S\frac{1}{2}$) of Section Thirty-four (34); all in Township Fifty-eight (58) North, Range Eighty-seven (87) West, Wyoming Meridian;

Southeast quarter of Southeast quarter ($SE\frac{1}{4}SE\frac{1}{4}$) and Southeast quarter of Southwest quarter ($SE\frac{1}{4}SW\frac{1}{4}$) (or Lot 6) in Section Thirteen (13); South half ($S\frac{1}{2}$) (or Lots 1, 2, 3, 4, 5, 6, 7 & 8) in Section Fourteen (14); Southeast quarter ($SE\frac{1}{4}$) of Section Fifteen (15) excepting about three (3) acres in the northwest corner thereof, also all that portion of the East half of Southwest quarter

(E $\frac{1}{2}$ SW $\frac{1}{4}$) of said Section Fifteen (15) now owned by the parties of first part; Southwest quarter (SW $\frac{1}{4}$) (or Lots 3, 4, 5 and 6) in Section Eighteen (18); North half (N $\frac{1}{2}$), Southwest quarter (SW $\frac{1}{4}$) and West half of Southeast quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Nineteen (19); Northeast quarter (NE $\frac{1}{4}$) and all that portion of the East half of Northwest quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) now owned by the parties of first part, all in Section Twenty-two (22); Northeast quarter (NE $\frac{1}{4}$), Northwest quarter of Northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) and South half (S $\frac{1}{2}$) of Section Twenty-three (23); East half (E $\frac{1}{2}$) and East half of Northwest quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Twenty-four (24); North half (N $\frac{1}{2}$) and Southeast quarter (SE $\frac{1}{4}$) of Section Twenty-five (25); North half of Northeast quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$) and a triangular tract in the northeast corner of the Northwest quarter (NW $\frac{1}{4}$) of Section Twenty-six (26); the West half (W $\frac{1}{2}$) of Section Twenty-nine (29); all of Section Thirty (30); all of Section Thirty-one (31); North half of Northwest quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$), Southwest quarter of Northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) and West half of Southwest quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Thirty-two (32); all in Township Fifty-eight (58) North, Range Eighty-eight (88) West, Wyoming Meridian;
North Half of Southeast quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) (or Lots 1 and 2), North half of Southwest

quarter ($N\frac{1}{2}SW\frac{1}{4}$) (or Lots 3 and 4), South half of Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) and South half of Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section Thirteen (13); North half of Southeast quarter ($N\frac{1}{2}SE\frac{1}{4}$) (or Lots 1 and 2) and South half of Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section Fourteen (14); North half of Northeast quarter ($N\frac{1}{2}NE\frac{1}{4}$) of Section Twenty-three (23); North- [17] east quarter ($NE\frac{1}{4}$), North half of Northwest quarter ($N\frac{1}{2}NW\frac{1}{4}$), Southeast quarter of Southwest quarter ($SE\frac{1}{4}SW\frac{1}{4}$), South half of Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) and Northeast quarter of Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) of Section Twenty-four (24); East half ($E\frac{1}{2}$), East half of Northwest quarter ($E\frac{1}{2}NW\frac{1}{4}$) and Northeast quarter of Southwest quarter ($NE\frac{1}{4}SW\frac{1}{4}$) of Section Twenty-five (25); Southeast quarter of Southeast quarter ($SE\frac{1}{4}SE\frac{1}{4}$) of Section Thirty-five (35); North half ($N\frac{1}{2}$), Southwest quarter ($SW\frac{1}{4}$), North half of Southeast quarter ($N\frac{1}{2}SE\frac{1}{4}$), and Southwest quarter of Southeast quarter ($SW\frac{1}{4}SE\frac{1}{4}$) of Section Thirty-six (36); all in Township Fifty-eight (58) North, Range Eighty-nine (89) West, Wyoming Meridian;

The hereinbefore described land containing in all approximately Seventeen Thousand Three Hundred (17,300.00) acres, more or less, according to the Government Surveys thereof; said mortgaged lands be subject, however, to rail-

road rights of way thru same, as same may have been heretofore deeded.

Also, all water rights now used or hereafter acquired for use on said above described premises however the same may be evidenced. Together with all rights herein evidenced in lateral ditches, right of way or easements in any wise connected therewith or used to carry water to or upon said lands above described.

And the said parties of the first part hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption, under and by virtue of any and all statutes of the State of Wyoming, providing for the exemption of homesteads from sale on execution or otherwise.

To have and to Hold the said above described premises unto the said party of the second part, its successors and assigns forever. Together with the privileges, hereditaments and appurtenances thereunto in anywise appertaining or belonging.

And the said parties of the first part, for their heirs, executors and administrators, do covenant and agree, to and with the said party of the second part, his heirs, executors, administrators and assigns, that at the ensealing and delivery of these presents they were well seized in the said premises, in and of a good and indefeasible estate, in fee simple.

And that they are free from all incumbrances whatsoever. [18]

And that they have good and lawful right to sell and convey the same, and that they will Warrant and defend the same against all lawful claims, and demands whatsoever.

And the said Fra M. Dana, wife of the said Edwin L. Dana (who received title to some of the lands herein described, as E. L. Dana), upon the consideration aforesaid, does hereby release and forever quit-claim unto said party of the second part, his heirs, executors, administrators and assigns, all her rights of dower and homestead in and to the above granted premises.

Provided, always, and these presents are upon this express condition, that if the said parties of the first part shall and do well and truly pay or cause to be paid unto the said party of the second part, its certain attorney, successors or assigns, the sum of Two Hundred Thousand Dollars (\$200,000), plus interest on same, according to the condition of four (4) certain promissory notes, bearing even date herewith and executed by the said Edwin L. Dana and Fra M. Dana, his wife, payable to Samuel McKennan, the party of the second part, in the respective amounts and due and payable as follows:—

One note for \$50,000 dated September 29, 1919, due October 1, 1924;

One note for \$50,000 dated September 29, 1919, due October 1, 1924;

One note for \$50,000 dated September 29, 1919, due October 1, 1924;

One note for \$50,000 dated September 29, 1919, due October 1, 1924;

all of said notes bearing interest according to the tenor of the coupons attached to same, said interest being due and payable on April 1st and October 1st, each year; both principal and interest due and payable at the Union Bank and Trust Company, Helena, Montana, which said sum of money the said Edwin L. Dana (who received title to some of the lands herein described, as E. L. Dana) and Fra M. Dana, his wife, hereby covenant to pay, together with interest thereon as agreed upon, and until such payment, shall pay all taxes and assessments upon the above described premises, or upon this mortgage, or the debt hereby secured, and all assessments for maintaining ditches [19] or supplying water to said described lands, before the same become delinquent, and shall keep the buildings thereon insured against fire in a sum not less than Dollars, for the benefit of the said party of the second part, his heirs, executors, administrators and assigns; with such insurance company or companies as they shall approve; then these presents and said promissory notes shall cease and be null and void. And if said parties of the first part shall fail to pay all taxes or assessments, or shall fail to keep the buildings upon said premises insured, as above provided, then, and in that case, the said party of the second part, his heirs, executors, administrators or assigns are hereby authorized to pay said taxes and assessments, and to pay for said insurance, and all such sum or sums

of money so expended shall be added to the debt hereby secured, and the same shall draw interest at the rate of seven per cent per annum, payable at interest maturing dates on said notes.

And it is hereby further provided that in case any installment of principal or any part thereof, or any interest moneys, or any part thereof, hereby secured to be paid, shall remain due and unpaid for the space of thirty days after the same shall, by the terms hereof, become due and payable, that then, and in that case, the whole principal sum hereby secured to be paid, together with the interest thereon, shall, at the option of the said party of the second part, his heirs, administrators, executors or assigns, become due and payable forthwith, anything herein or in said promissory notes contained to the contrary notwithstanding.

And in case default shall be made in the payment of the said principal sum of money hereby intended to be secured, or in the payment of the interest thereof, or any part of such principal or interest, as above provided, then it shall and may be [20] lawful for the said party of the second part, his heirs, executors, administrators or assigns, to sell and dispose of said above described premises, and all the right, title, benefit and equity of redemption of said parties of the first part, their heirs or assigns therein, at public auction, for cash, according to the statute in such case made and provided, and in the manner therein prescribed, and out of the money arising from such sale, to retain the said

principal and interest, together with the cost and expenses of such sale, and attorney, solicitor or counsel fees, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said parties of the first part, their heirs, executors, administrators or assigns, and in any proceeding in equity to foreclose this mortgage, said solicitor fees shall be taxed as costs in said action.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

EDWIN L. DANA (Seal)

FRA M. DANA (Seal)

Signed, sealed and delivered in presence of:—

H. C. SCHUYLER

JOSEPH W. CHIVERS [21]

State of Montana

County of Lewis and Clark—ss.

I, Joseph W. Chivers, a Notary Public in and for the State of Montana, do hereby certify that said Edwin L. Dana (who received title to some of the lands herein described, as E. L. Dana) and Fra M. Dana, his wife, personally known to me as the persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged to me that they signed, sealed and delivered said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and expressly waived and released all right, title and benefit of exemption under any and

all Homestead Exemption Laws, so called, of said State of Wyoming.

And I further certify that Fra M. Dana, wife of the said Edwin L. Dana (Who received title to some of the lands herein described, as E. L. Dana), was by me first examined separate and apart from her said husband in reference to the signing and acknowledging such deed, the nature and effect of said deed being explained to her by me, and that she being by me fully apprised of her right, and of the effect of signing and acknowledging said deed, did then acknowledge that she freely and voluntarily signed and acknowledged the same for the uses and purposes therein set forth, and expressly waived and release all her rights and advantages under and by virtue of all laws of said State of Wyoming, relating to the Exemption of Homesteads.

Given under my hand and Notarial Seal, this 29th day of September, A. D., 1919.

(Notarial Seal) JOSEPH W. CHIVERS
Notary Public for the State of Montana; residing
at Helena, Montana.

My commission expires September 9, 1921.
\$40.00 revenue stamps affixed to notes & cancelled.

[22]

EXHIBIT "B"

This indenture, made the 29th day of September, in the year of our Lord one thousand nine hundred nineteen by and between E. L. Dana and Fra M. Dana, his wife, of the County of Sheridan and State

of Wyoming, the parties of the first part, and Samuel McKennan, of the County of Lewis and Clark, State of Montana, the party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of Two Hundred Thousand Dollars lawful money of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns, forever, all the certain lots, pieces or parcels of land situate, lying and being in the County of Big Horn, and State of Montana, particularly described as follows, to-wit:

The West Half ($W\frac{1}{2}$) of Section Thirty-one (31), Township Nine (9) South, Range Thirty-six (36) East, Montana Meridian,

The West half ($W\frac{1}{2}$) and Southwest quarter of Southeast quarter ($SW\frac{1}{4}SE\frac{1}{4}$) of Section Thirteen (13); North half of Northeast quarter ($N\frac{1}{2}NE\frac{1}{4}$), Southeast quarter of Northeast quarter ($SE\frac{1}{4}NE\frac{1}{4}$) and Southeast quarter ($SE\frac{1}{4}$) of Section Fourteen (14); North half of Northeast quarter ($N\frac{1}{2}NE\frac{1}{4}$), Southeast quarter of Northeast quarter ($SE\frac{1}{4}NE\frac{1}{4}$) and East half of Southeast quarter ($E\frac{1}{2}SE\frac{1}{4}$) of Section Twenty-three (23); West half ($W\frac{1}{2}$) of Section Twenty-four (24); South half of Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) and Southeast quarter ($SE\frac{1}{4}$) of Section Twenty-five (25); and Northeast quarter ($NE\frac{1}{4}$) of Section Thirty-six (36); all in Township Nine (9) South,

Range Thirty-five (35) East, Montana Meridian;

Subject, however, to railroad rights of way thru any of the foregoing land, which may have been heretofore deeded. [23]

The foregoing described lands containing in all the sum of approximately Eighteen Hundred Seventy (1,870) acres, more or less, according to the Government Surveys thereof, together with all water, water rights, ditches, aqueducts, appropriations and franchises upon, leading to, connected with or usually had and enjoyed in connection with said described premises and each and every part and parcel thereof whether represented by shares of capital stock in any ditch company or by actual individual ownership or otherwise, or which may hereafter be acquired by the said party of the first part during the existence of this Mortgage and used in connection with the said described premises or any part thereof. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

The said parties of the first part represent to and covenant with the said party of the second part, his heirs and assigns, that they will Warrant and Defend said premises against the lawful claims of all persons whomsoever, and the said parties of the first part hereby relinquish all right of dower and all right of homestead accruing or to accrue in and to said premises.

This Indenture Is Intended as a Mortgage to secure the payment of four (4) certain promissory notes, executed by E. L. Dana and Fra M. Dana,

his wife, payable to Samuel McKennan, each note for the sum of Fifty Thousand Dollars (\$50,000), aggregating Two Hundred Thousand Dollars (\$200,000.00), said notes being dated September 29, 1919, maturing October 1st, 1924, and bearing interest according to the tenor of the coupons thereto attached, said interest due April 1st and October 1st, each year, both principal and interest due and payable at the Union Bank and Trust Company, Helena, Montana.

It is agreed that if the parties of the first part fail to pay said principal or interest or any part thereof when due, [24] or any taxes, assessments or insurance premiums as hereinafter provided, or fail to comply with any one of the conditions of this mortgage, then all of said debts shall at the option of the party of the second part become due and collectible and all rents and profits of said property shall then immediately accrue to the benefit of said party of the second part, and the occupants of said property shall pay rent to the said party of the second part or his agent, and this mortgage may be foreclosed for the full amount together with costs, taxes, insurance premium and a reasonable attorney's fee for plaintiff's attorney to be fixed and allowed by the court, and any other and all sums advanced or expense incurred on account of said parties of the first part for whatsoever purposes paid; and any advances paid shall draw interest at the rate of seven per cent per annum and be liens under this mortgage. In case of fore-

closure hereof the cost of an abstract of title shall be taxed as a part of the costs in the case and paid by the parties of the first part, and the plaintiff in such foreclosure suit shall be entitled upon his demand, and without the necessity of showing any cause therefore, to have a receiver appointed to take charge of said property, and to collect the rents and profits thereof and with the same powers as if appointed under statutory provisions; and the said party of the second part may be appointed such receiver. The omission of the party of the second part to exercise the option herein provided for at any time or times shall not preclude said party of the second part from the exercise of such option at any subsequent default or defaults of the parties of the first part in payment as aforesaid. And said party of the second part is not required to give any notice as to the exercise of said option but may proceed at any time or times after any default shall have occurred, to sell the property herein described and collect the amount due hereunder, or at his option to institute suit for the foreclosure hereof in the courts in the ordinary way, it being [25] expressly understood and agreed that in case of default the said party of the second part, or in case of his absence, death, refusal to act, or disability in any wise, the (then) acting Sheriff of Big Horn County, Montana, at the request of the legal holder of said Notes may proceed to sell the property hereinabove described, or any part thereof, at public vendue, to the highest bidder, at the front

door of the Court House, in the said Big Horn County, Montana, for cash, of which sale at least twenty days' notice of the time, terms and place of sale, and of the property to be sold, shall be advertised in some newspaper, printed and published in the said Big Horn County, and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale; and the moneys realized from such sale, after payment of the costs, charges, expenses of said sale, including reasonable attorney's fees and the repayment of all sums of money advanced by the party of the second part, his heirs or assigns, be applied to the payment of the indebtedness hereby secured.

It is further agreed that until said debt is fully paid the parties of the first part shall keep all legal taxes and assessments against said property and the interest of the party of the second part or his assigns therein by virtue of these presents, fully paid and shall keep all insurance in a reliable insurance company or companies to the amount of at least Dollars on the buildings on the described premises for the benefit of the said party of the second part, his heirs and assigns, and to deliver to the said party of the second part or his agent said policy or policies of insurance and renewals thereof to be held until said debt is fully paid, and it is hereby made a part of this instrument that said insurance shall be in a company or companies satisfactory to the said party of the

second part or his agent, and [26] said party of the second part or his agent may at his option designate the company or companies in which such insurance shall be written, and for such purpose the party of the second part is hereby appointed and constituted the agent of the parties of the first part; and in event of injury or destruction of said building by fire, the said party of the second part is hereby expressly authorized to make settlement with the insurance companies for the amount of insurance that may be paid thereon and to receive money due upon such insurance, and for the purpose of making such receipt and settlement the said party of the second part is constituted the attorney in fact of the parties of the first part with full power to do all and everything proper and necessary to be done in and about such settlement and receipt of insurance money as fully to all intents and purposes as the parties of the first part might or could do if personally present; and on default the party of the second part may pay such incumbrance, taxes and assessments, or effect such insurance and collect the amount thereof with seven per cent interest, and in the event of any of the taxes or assessments on said premises or the interest of the party of the second part or his assigns therein by virtue of these presents becoming delinquent and the said party of the second part purchasing said property at public sale, it is hereby agreed as a part of this indenture that said party of the second part shall be entitled to the full penalty

authorized by law to be added to the amount of said taxes or assessments so paid, which entire sum shall then become a part of the debt hereby secured and bear interest at the rate of seven per cent per annum from date of purchase, and said party of the second part may without delay at his option enter upon and take possession of said described property, and said party of the second part is not required to give notice as to the exercise of such option. [27]

It is further agreed that said parties of the first part shall keep all buildings, fences or other improvements on said premises in as good repair and condition as the same are at this date.

It is further agreed that in the event of the commencement of an action for the foreclosure of this mortgage the attorney's fee herein provided for shall become due, and should said party of the second part, his heirs or assigns become involved in litigation by reason hereof or should the title of the parties of the first part be called in question in any action or proceeding in any court or before the Land Department of the United States and the party of the second part shall make expense thereto or incur expense in defending for the parties of the first part, all the costs and expenses incurred therein shall be paid by the parties of the first part, and the same recovered as a part of the money hereby secured.

It is further agreed that if on the sale of the mortgaged property it fails to bring sufficient to pay the entire debt hereby secured, with interest,

costs, attorney's fees and disbursements, the parties of the first part shall pay the deficiency.

And it is expressly understood that the terms, conditions and provisions hereof whether so expressed in each case or not shall apply to and bind the respective parties, their heirs, executors, administrators and assigns.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year herein first above written.

[Seal] E. L. DANA

[Seal] FRA M. DANA

Signed and Sealed in the presence of
H. C. SCHUYLER [28]

State of Montana,
County of Lewis and Clark—ss.

On this 29th day of September, nineteen hundred and nineteen before me Joseph W. Chivers, a Notary Public for the State of Montana, personally appeared E. L. Dana and Fra M. Dana, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal) JOSEPH W. CHIVERS

Notary Public for the State of Montana residing
at Helena, Montana.

My commission expires Sept. 9th, 1921.

\$40.00 Revenue stamps affixed to notes and cancelled. [29]

EXHIBIT "C"
MORTGAGE DEED

This deed, made this 21st day of July in the year of our Lord one thousand nine hundred and twenty-six between Edwin L. Dana and Fra M. Dana, his wife, of the County of Sheridan, State of Wyoming, parties of the first part and Samuel McKemman, of the County of Lewis and Clark, State of Montana, party of the second part;

Witnesseth, that the said parties of the first part, for and in consideration of the sum of (\$200,000.00) Two Hundred Thousand Dollars to them in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, and unto his successors, heirs, administrators, executors and assigns, forever, all that piece or parcel of land, situate, lying and being in the County of Sheridan and the State of Wyoming,—hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State, and more particularly known and described as follows, to-wit: South half of Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$) and Northeast quarter of Southwest quarter ($NE\frac{1}{4}SW\frac{1}{4}$) of Section Twenty-four (24) and Southeast quarter of Northeast quarter ($SE\frac{1}{4}NE\frac{1}{4}$) of Section Twenty-three (23), in Township Fifty-eight (58) North, of Range Eighty-nine (89) West of the 6th Principal

Meridian, Sheridan County, State of Wyoming, containing One Hundred Sixty (160) acres; to have and to hold the said above-described premises unto the said party of the second part, his successors, heirs, executors, administrators and assigns forever. Together with the privileges, hereditaments and appurtenances thereunto in any wise appertaining or belonging.

And, the said parties of the first part, for themselves, their successors, heirs, executors, administrators and as- [30] signs, do..... covenant and agree, to and with the said party of the second part, his successors, heirs, executors, administrators and assigns, that at the ensealing and delivery of these presents said Edwin L. Dana and Fra M. Dana, his wife, are well seized in said premises, in and of good and indefeasible estate, in fee simple.

And that they are free from all incumbrances whatsoever.

And that they have good and lawful right to sell and convey the same, and that they will warrant and defend the same against all lawful claims and demands whatsoever.

And the said Fra M. Dana, wife of the said Edwin L. Dana, upon the consideration aforesaid, does hereby and forever quitclaim unto said party of the second part, his successors, heirs, executors, administrators and assigns, all her rights of homestead in and to the above granted premises.

Provided, always, and these presents are upon this express condition, that if the said parties of

the first part shall and do well and truly pay or cause to be paid to the said part..... of the second part, or his certain attorney, successors, heirs, executors, administrators or assigns, the sum of (\$200,000.00), plus interest on same, as evidenced by four (4) promissory notes, bearing date September 29, 1919, executed by said Edwin L. Dana and Fra M. Dana, his wife, payable to Samuel McKennan, in amounts and maturities as follows, to-wit:

One note for \$50,000 dated September 29, 1919, due October 1, 1924;

One note for \$50,000 dated September 29, 1919, due October 1, 1924;

One note for \$50,000 dated September 29, 1919, due October 1, 1924;

One note for \$50,000 dated September 29, 1919, due October 1, 1924;

all bearing interest according to the tenor of the coupons attached to same, or expressed therein, said interest being due and payable on April 1st and October 1st of each year; both principal and interest due and payable at Union Bank and Trust Company, of Helena, Montana;

according to the conditions of certain promissory note....., bearing even date herewith, and executed by said to the said part..... of the second part, which sum or sums of money [31] the said Edwin L. Dana and Fra M. Dana, his wife, hereby covenant to pay, and until such payment, shall pay all taxes and assessments upon the above described premises; and shall keep the buildings

thereon insured against fire in the sum of not less than dollars during the life of this mortgage, for the benefit of and payable to the said party of the second part, his successors, heirs, executors, administrators and assigns, with such insurance company or companies as they shall approve; then these presents and said notes shall cease and be null and void. And if parties of the first part shall fail to pay all taxes or assessments upon said premises, or shall fail to keep the buildings upon said premises insured, as above provided; then, and in that case, the said party of the second part, his successors, heirs, executors, administrators or assigns, are hereby authorized to pay said taxes and assessments and to pay for said insurance, and all such sum or sums of money so expended shall be added to the debt hereby secured, and the same shall draw interest at the same rate.

And it is hereby further provided that in case any installment of principal or any part thereof, or any interest moneys, or any part thereof hereby secured to be paid, shall remain due and unpaid for the space of thirty days after the same shall, by the terms hereof, become due and payable; then, and in that case, the whole principal sum hereby secured to be paid, together with the interest thereon, shall, at the option of said party of the second part, his successors, heirs, executors, administrators or assigns, become due and payable forthwith, anything herein or in said promissory notes.

And in case default shall be made in the payment of the said principal sum of money hereby intended

to be secured, or in the payment of the interest thereof, or any part of such principal or interest, as above provided, then it shall and may be lawful for the said party of the second part, his successors, heirs, executors, administrators or assigns, to sell and dispose of said above-des- [32] cribed premises, and all the right, title, benefit and equity of redemption of said parties of the first part, their heirs, executors, administrators or assigns therein, at public auction, for cash, according to the statute in such case made and provided and in the manner therein prescribed, and out of the money arising from such sale, to retain the said principal and interest, together with the costs and expenses of such sale and Dollars for attorney, solicitor or counsel fees, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said parties of the first part, their heirs, successors, executors, administrators or assigns, and in any proceeding in equity to foreclose this mortgage; said solicitor fee shall be taxed as costs in said action.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

EDWIN L. DANA (Seal)

FRA M. DANA (Seal)

Signed, Sealed and Delivered in the presence of
J. J. BENTLEY

The State of Wyoming,
County of Sheridan—ss.

On this 21st day of July, 1926, before me personally appeared Edwin L. Dana and Fra M. Dana, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed, including the release and waiver of the right of homestead, the said wife having been by me fully apprised of her right and the effect of signing and acknowledging the said instrument.

Given under my hand and Notarial seal, this 21st day of July, A. D. 1926.

(Notarial Seal) J. J. BENTLEY

Notary Public

My commission expires on the 3rd day of April, A. D. 1927.

[Endorsed]: Filed June 7, 1938. [33]

Thereafter, on October 27, 1939, the ORDER OF THE COURT APPROVING AND CONFIRMING PROPOSAL OF DEBTOR, was duly filed and entered herein, being in the words and figures following, towit: [34]

[Title of District Court and Cause.]

The proceeding here is under Section 75 (a) to (r) of the National Bankruptcy Act as amended. Title 11, U.S.C.A., Sec. 203. One of the principal

questions to be determined is whether the application by debtor for confirmation of an extension proposal has been accepted in writing by a majority in a number of all creditors, whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims (Sub. Sec. g).

After a hearing in April, 1938, at which debtor and objecting creditors appeared and submitted evidence in respect to the sufficiency of the original petition for administration of debtor's property under Section 75, and after arguments of counsel for the respective parties and claimants, the court held that the petition was in proper form and that the petitioner was qualified under the governing statute, and that the petition should be filed and referred to the conciliation commissioner and the petitioner accorded relief under the bankruptcy Act aforesaid, providing he complied with the provisions thereof.

Thereafter another hearing was held on the application of debtor for confirmation of an extension proposal and on objections by creditors that debtor had failed to comply with the provisions of subsection g; arguments were heard, and briefs thereafter submitted; this is the principal matter before the court at this time. After consideration of transcript, exhibits, reports, briefs and other pertinent papers and files in said cause, consisting of 600 pages or more, in the court's opinion, there can be

no doubt that this essential fact of acceptance of debtor's [35] proposal as required by statute, a prerequisite to confirmation, has been established by evidence that is clear and convincing.

After the court had determined that debtor was qualified to seek relief under Section 75, the case was referred to D. L. Egnew, Conciliation Commissioner of Hardin, Big Horn County, Montana, in which county a part of the real and personal property of debtor is situated, and since the month of April, 1938, the officer above named, has been constantly in touch with the management of debtor's property and directed the administration of the estate in accordance with the provisions of the statute, and because of the extent and value of the properties involved has devoted the greater part of his time, since the case was referred to him, to a consideration of the questions arising, which frequently required his presence on the property and an inspection of the various parcels of land and other property involved, situated in Montana, as aforesaid, and in Sheridan County, Wyoming; all of which was in addition to the usual office work required, which was augmented by hearings and reports to the court and his attendance at hearings before himself as commissioner and also before the court. As a result of his investigations concerning the affairs of the estate, assets and liabilities, claims against it, the extent and value of the resources at hand and the character of the management, the Commissioner states in his report to the court,

among other things, as follows: "it is recommended to the court that the extension proposal be confirmed, the court to retain sufficient jurisdiction of said debtor and its property to supervise the income and expenses of said debtor." Reports of the Commissioner are to be deemed presumptively correct, but subject to review by the court; if the court should find that error has been committed the report may be rejected in whole or in part; if otherwise it may be adopted, or modified as circumstances seem to require. G.O. Rule [36] No. XLVII. The following rule should also be noted: "Insofar as is consistent with the provisions of Section 75 and of this general order, the Conciliation Commissioner shall have all the powers and duties of a referee in bankruptcy and the General Orders in Bankruptcy shall apply to proceedings under said Section". General Order L, subdivision 11. Again rule No. XII provides: "and thereafter, all the proceedings, except such as are required as by the Act or by these general orders, to be had before the Judge, shall be had before the referee." The report of the commissioner is presumed to be correct, and that presumption is strengthened by consideration of the matters set forth and the standing of the officer who wrote it.

Before confirmation of a proposal the court must be satisfied: "that (1) it includes an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the farmer; (2) it

is for the best interests of all creditors, and (3) the offer and its acceptances are in good faith, and have not been made or procured except as herein provided, or by any means, promises or acts herein forbidden. In application for extension, the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt is contracted." Sub.-Div. i.

From a fair consideration of the case as presented it seems to the court that debtor has complied with the provisions of the statute as above outlined, and that debtor's proposal should be approved in accordance with the recommendation of the Conciliation Commissioner, and such is the order of the court; and it therefore follows that the several objections to confirmation of proposal and motions to dismiss should be and are hereby overruled and denied.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed Oct. 27, 1939. C. R. Garlow,
Clerk. By C. G. Kegel, Deputy. [37]

Thereafter, on March 25, 1940, Order Approving Claim of Frank Bogart, a Creditor, was duly filed and entered herein, being as follows, towit: [38]

[Title of District Court and Cause.]

ORDER APPROVING CLAIM OF
FRANK BOGART, A CREDITOR

In the opinion of this Court relating to the claim of Frank Bogart, a creditor, filed herein on the 27th day of October, 1939, it is said:

“By consent of debtor and claimant, the matter here in controversy was heard before the conciliation commissioner who reported to the court as follows: ‘It is, therefore, recommended that claimant, Frank Bogart, be required to either return one set of notes, or to properly protect debtor against the negotiation and presentation for payment thereof, if said notes are lost, and that he be required to release one of the duplicate mortgages of record.’ A reasonable recommendation and therefore adopted.”

And it appearing that the said Bogart has released E. L. Dana and Fra Dana from all personal liability upon the promissory notes referred to and mentioned in said claim and secured by the mortgages, copies of which are made exhibits to said claim, and it further appearing that there has been filed by the said Bogart proper and sufficient release of the mortgage of the E. L. Dana Livestock Company recorded in the office of the County Clerk of Sheridan County, Wyoming in Book 39 of Mortgages, at page 392, and also a proper and sufficient release of the mortgage made by the E. L. Dana Livestock Company and recorded in the office of the

County Clerk and Recorder of Big Horn County, Montana, in Book 19 of Mortgages, at pages 234 and 235, and that the time for the presentation of any claim, based upon the promissory notes purporting to be secured by said mortgages, has expired.

It is now ordered that the claim of Frank Bogart be and the same is hereby approved and allowed as filed. [39]

Dated this 25th day of March, 1940.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered March 25, 1940.
C. R. Garlow, Clerk. By C.G. Kegel, Deputy. [40]

Thereafter, on December 9, 1940, Petition of Frank Bogart, a creditor, for an order to show cause why mortgages securing claim of Frank Bogart should not be foreclosed, was duly filed herein, being as follows, towit: [41]

[Title of District Court and Cause.]

PETITION

Your petitioner, Frank Bogart, respectfully states as follows:

That on or about the 27th day of September, 1940, he notified the debtor that he elected to accept a payment of ten per cent. of the indebtedness to him as established by the approval of his claim, in lieu of rent, as provided in the proposal of the debtor.

That no payment whatever has been made to your petitioner of any amount of his claim.

Wherefore, your petitioner prays that the debtor be required to show cause why this proceeding should not be dismissed, or your petitioner granted permission to enforce collection of his claim by foreclosure of the mortgages upon which such claim is based.

FRANK BOGART,
Claimant.

GUNN, RASCH, HALL & GUNN
Attorneys for Claimant.

State of Montana,
County of Lewis and Clark—ss.

Frank Bogart being duly sworn, deposes and says: That he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge.

FRANK BOGART

Subscribed and sworn to before me this 9th day of December, 1940.

[Notarial Seal] A. A. MAJOR
Notary Public for the State of Montana. Residing
at Helena, Montana.

My commission expires Feb. 28th, 1943.

[Endorsed]: Filed Dec. 9, 1940. C. R. Garlow,
Clerk. [42]

Thereafter, on January 3, 1941, a Return to Order to Show Cause issued on Petition of Frank Bogart, was duly filed herein, being as follows, towit: [43]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

For its answer and return to the order to show cause secured herein by Frank Bogart, the above named debtor respectfully alleges and shows to the Court

(1) That on the nineteenth day of December, 1940, the debtor forwarded to the Conciliation Commissioner herein the sum of Fifteen thousand four hundred eighty two dollars and fifty cents (\$15,482.50) with the suggestion that such amount be forwarded to Frank Bogart as payment in full of the ten per cent (10%) due him upon his claim as filed. That the said Conciliation Commissioner, in accordance with the order of this Court, forwarded the same for deposit in Great Falls and forwarded to Frank Bogart said amount less two per cent (2%) which debtor is informed and believes was deducted by the said Conciliation Commissioner as a part of the cost of supervision properly taxable to the said Frank Bogart in this proceeding.

(2) That the debtor arrived at said sum of Fifteen thousand four hundred eighty-two dollars and fifty cents (\$15,482.50) by computing the amount due upon said claim as of the date of the commencement of this proceeding, to-wit: One hundred fifty

thousand dollars (\$150,000.00) principal plus interest to April thirteenth, 1938, at six per cent (6%) per annum which made the amount of principal and interest due as of that date of One hundred fifty four thousand eight hundred twenty-five dollars (\$154,825.00).

(3) The debtor verily believes that said amount so paid to the said Frank Bogart is the true amount to which the said Frank [44] Bogart was and is entitled to receive. The said Frank Bogart has received said sum but the said Frank Bogart through his attorneys insisted that the amount of said payment should be figured upon a slightly different basis, to-wit: Ten per cent (10%) of the amount due of principal and interest as of the date of payment and despite having received said payment seek to maintain their motion on the order to show cause.

(4) That the difference arrived at between the two methods of computation is the sum of Two thousand three hundred ninety-five dollars (\$2,395.00) and the debtor is able to pay said sum if its basis for computation is erroneous.

(5) That the delay in making said payment to the said Frank Bogart from December first as fixed in its proposal to December nineteenth was occasioned by the facts that one of the attorneys for debtor, to-wit: S. C. Ford, was in the last general election elected Governor of the State of Montana and his time has been completely taken up with

preparations to assume the duties of that office, and the other attorney was absent due to the serious illness of his father about the time that said payment should have been made, and the Managing Agent of the debtor did not wish to make said payment without the advice of his counsel. That the attorneys for said debtor had advised the officers of this debtor that the method adopted by the debtor in computing the amount of said payment was the correct one and the amount of said payment was made in accordance with the opinion of counsel for the debtor.

(6) That shortly before said payment became due by the terms of the proposal and the order confirming it, debtor became engaged in a series of negotiations with creditors having secured claims and whose security consisted of machinery and chattels and in accordance with the priorities and equities of the situation entered into tentative agreements with the several creditors in such class to pay said claims in full instead of only part thereof. That said secured creditors had security that was depreciat- [45] ing in value and each of said creditors offered inducements to the debtor to pay their claim in full. That said inducements, in accordance with the order of this Court as of March eighth, 1940, were sufficient to cause the Conciliation Commissioner to approve such settlements, and pursuant to such settlements the debtor did pay in full the following claims: Midland Implement Company,

Counolly Machinery Company, Austin Western Company, H. S. Withington, Percy and Emma Glenn, and did make a novation with C. E. Clark whereby said claim was released and is now negotiating with Abbott Company and has executed its check in payment of said claim and the same is true of the claim of John Stark. That all of said creditors have waived the claim for interest and have discounted the face of their claim in various amounts. All of such settlements so approved by the Conciliation Commissioner and paid by the debtor were very beneficial to the debtor and particularly to its unsecured creditors but that paying said claim in full rather than ten per cent (10%) thereon reduced the amount of cash on hand and debtor does not desire, unless ordered by the Court, to pay the said Frank Bogart any more on his claim at the present time.

(7) That on or about the twenty-fifth day of October, 1940, debtor offered to pay the claim of the said Frank Bogart in full if the said Bogart would accept cattle at the market price therefor or offered to undertake to pay said claim in full if the said Frank Bogart would offer inducement therefor as required by the order of this Court for paying claims out of turn but that the said Frank Bogart, through his attorney, stated to the attorney for the debtor that he did not care to accept cattle for any amount nor to reduce his claim in any amount whatsoever. [46]

(8) That at the commencement of this proceeding the value of the real estate security held by the

said Frank Bogart was several times the amount of the debt and that since said time the debtor has made many valuable improvements thereon by constructing and repairing ditches, fences, buildings, and storage facilities, roads, bridges, corrals, and other improvements.

(9) That under all of the circumstances of this proceeding, it would be inequitable and unjust to the debtor and its unsecured creditors either to dismiss this proceeding or to permit the said Frank Bogart to commence any proceeding for the foreclosure of his real estate mortgage or to permit foreclosure of the real-estate mortgage claimed to be owned by him.

(10) That affiant is informed, verily believes that shortly before the securing of the order to show cause one of the attorneys for Frank Bogart talked on the telephone with the Conciliation Commissioner and with C. E. Miller, Jr., the Managing Agent of the debtor, and received assurances that said sum will be paid within thirty (30) days; whereas, said sum was paid within nineteen (19) days.

Wherefor, debtor prays that having fully shown cause herein why this proceeding should not be dismissed nor the said creditor permitted to foreclose that the Court make an appropriate order that the said Frank Bogart be denied the relief prayed for.

Debtor further prays that if the Court finds that the proposal and the order confirming it should be construed as contended for by Frank Bogart that

in that event debtor be granted permission to petition that its proposal be amended so as to provide for the annual payment of ten per cent (10%) of the amount due to any claim at the commencement of this [47] proceeding and to lower the interest rate to be charged on any claim during this proceeding by any secured creditor including Frank Bogart charging six per cent (6%) on more than One Hundred fifty thousand dollars (\$150,000.00) and Abbott Company attempting to charge nine per cent (9%) on the balance of its claim which was originally approximately Nine Thousand three hundred dollars (\$9,300) to three and a half per cent (3½%) per annum or such other interest rate as may be just pursuant to the decision in the case of Cohan versus Elder decided June 7th, 1940, by the United States Circuit Court of Appeals for the ninth circuit.

THE MILLER LAND AND
LIVESTOCK CO.

By C. LIEBERT CRUM,

C. Liebert Crum, its attorney.

State of Montana,
County of Yellowstone—ss.

C. Liebert Crum, being first duly sworn on oath states: that he is one of the attorneys for Miller Land and Livestock Company and makes this affidavit on its behalf. That he has read the foregoing answer and return, knows the contents thereof, and

that the same are true of his own knowledge save and *accept* those allegations which are made on information and belief and as to those allegations affiant states that he believes the same to be true. That affiant makes this affidavit on behalf of Miller Land and Livestock Company because the Managing Agent thereof and the other officers thereof are not presently available not being in the state of Montana or of Wyoming.

C. LIEBERT CRUM

Subscribed and sworn to before me this third day of January, 1941.

[Seal] R. M. WATERS

Notary Public for the State of Montana residing at Billings, Montana.

My commission expires Feb. 4, 1941.

[Endorsed]: Filed Jan. 3, 1941. C. R. Garlow, Clerk. [48]

Thereafter, on April 29, 1941, a Petition of Frank Bogart, creditor, for order directing Debtor to pay balance within reasonable time, or show cause why mortgages securing Bogart claim should not be foreclosed, was filed herein, being as follows, towit:

[51]

[Title of District Court and Cause.]

PETITION

Your petitioner, Frank Bogart, respectfully states as follows:

That, although a reasonable time has elapsed, he has not been paid by the Debtor, or anyone, the balance found due and owing by the order made and entered herein, a copy of which is hereto attached, and that he is informed and advised by the Clerk of this Court that a copy of said order was mailed to E. Liebert Crum, one of the attorneys for the Debtor, on the 7th day of April, 1941. That the balance unpaid amounts to the sum of \$2724.65.

Wherefore, your petitioner prays that an order be made directing said Debtor to make payment of said balance within a reasonable time to be fixed in said order and upon failure to do so to show cause why petitioner should not be permitted to foreclose the mortgages securing the payment of said claim.

FRANK BOGART,
Petitioner.

GUNN, RASCH and GUNN,
Attorneys for Petitioner.[52]

State of Montana,
County of Lewis and Clark—ss.

Frank Bogart, being duly sworn, deposes and says: That he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge.

FRANK BOGART

Subscribed and sworn to before me this 29th day of April, 1941.

[Notarial Seal] A. A. MAJOR
Notary Public for the State of Montana. Residing
at Helena, Montana.

My commission expires Feb. 28, 1943.

[Endorsed]: Filed April 29, 1941. C. R. Garlow,
Clerk. [53]

[Title of District Court and Cause.]

The petition of Frank Bogart, one of the secured creditors in the above entitled cause, seeking the dismissal of said cause or else permission to foreclose his mortgages, for alleged failure to make certain payments therein set forth, came on regularly for hearing on the order to show cause and return thereto by the above named debtor.

The court has considered the arguments of counsel for both parties, and is of the opinion, under the facts presented here, that the payment in question should have equaled ten per cent of the indebtedness at the time of payment, which would have to be computed on the principal sum plus the accrued interest at that date. Otherwise the request in the petition to dismiss or allow foreclosure proceedings, is hereby denied.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed Apr. 7, 1941. C. R. Garlow,
Clerk. [54]

Thereafter, on April 29, 1941, Order requiring Debtor to Show Cause, was duly filed and entered herein, being as follows, towit: [55]

[Title of District Court and Cause.]

ORDER

It appearing that the Debtor has failed and neglected to make payment of the sum of \$2724.65, the balance due and unpaid as found and determined by the Order of this Court dated April 7th, 1941:

It is ordered that said payment be made on or before the 10th day of May, 1941, or cause be shown before the above-entitled Court, in the Court Room of the Federal Building, in the City of Great Falls, Montana, at 10:00 o'clock A.M. on said day, why permission should not be granted to the claimant, Frank Bogart, to foreclose the mortgages securing the payment of his claim.

The Clerk is hereby directed to make service of this Order immediately, by mailing a certified copy thereof to E. Liebert Crum, one of the attorneys for the Debtor, at his post office address in Parkman, Wyoming.

Dated this 29 day of April, 1941.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered April 29, 1941.
C. R. Garlow, Clerk. [56]

Thereafter, on May 7, 1941, Answer of Debtor to Petition of Frank Bogart; and Cross Petition of Debtor, were duly filed herein, being as follows, to-wit: [57]

[Title of District Court and Cause.]

ANSWER TO PETITION OF FRANK
BOGART AND CROSS PETITION
OF DEBTOR.

Comes Now the above named Farm Debtor and for its answer to the Petition of Frank Bogart respectfully shows to the Court:

I.

That the Court in its Order of April 29, 1941, is in error in figuring the amount due from the debtor to the said Frank Bogart according to the Court's previous Order of April 7th, 1941, in that the Court found that:

“The payment should have equaled 10% of the indebtedness at the time of the payment, which would have to be computed on the principal sum plus the accrued interest at that date.”

That the date referred to was December 19, 1940.

That the principal amount on that date was \$150,000.00.

That the interest was from October 1st, 1937, at the rate of six per cent per annum and amounted at that date to \$28,920.00.

That the principal and interest on that date amounted to \$178,920.00.

That ten per cent thereof was \$17,892.00 and that Debtor paid \$15,482.00, making a difference of \$2,410.00 instead of the \$2,724.65 mentioned in the Court's Order of April 29, 1941.

II.

That a reasonable time to make such payment, considering the season of the year, the operations of the Debtor and the nature of its resources, has not elapsed since said order of April 7th, 1941 was served on Debtor or its attorney.

III.

That since the commencement of this proceeding the Debtor [58] has increased the value of the security of the said Frank Bogart in excess of \$100,000.00 and that such improvements and repairs were necessary and proper in order to increase the productivity of the Debtor estate as a whole in order to more quickly and surely pay off the creditors of Debtor in accordance with its proposal. That the real estate upon which first mortgages exist claimed by Frank Bogart covers about 16,000 to 18,000 acres of the approximately 26,000 acres of the deeded land owned by Debtor and that the cost of all of said land was \$1,102,908.33, and said land has now been improved as above stated and approximately eighty per cent of said land and value are subject to said mortgages of the said Frank Bogart. That

due to unusual financial and general economic conditions and existing litigation between Debtor and Fra and E. L. Dana pending in this Court and as yet un-adjudicated, Debtor has so far been unable to refinance the said Bogart claim but, alleges that the said Frank Bogart is secured to an extent that to permit him to foreclose his said mortgages would enable him to take security worth \$800,000.00 for a claim of approximately \$180,000.00.

IV.

That there are approximately \$200,000.00 of unsecured claims approved in this proceeding and that if the said Frank Bogart is permitted to commence a foreclosure action it will destroy the greater part of the value of the assets not covered by any mortgage to Frank Bogart and such unsecured creditors would get little or nothing under such conditions.

V.

That due to unusual requirements and rulings of the Department of the Interior the Debtor has been required to, and did, post some \$25,000.00 cash bond and to pay some \$20,000.00 to pay for and secure in advance its Indian leases of approximately 12,000 acres, and to insure the most efficient [59] and economical operation Debtor has recently acquired some \$12,000.00 worth of farm machinery for which it has paid part cash.

VI.

That Debtor has arranged credits of some \$200,000.00 for the purchase of cattle to restock its range and has recently acquired 4400 good ewes for such purpose, but that such credits above mentioned are not available to pay Mr. Bogart who will be benefited by profits from such operations.

VII.

That the Debtor has on hand 150,000 pounds of alfalfa seed and some 1500 swine, but it will require some time to properly liquidate the same in a proper manner and if forced to liquidate any material part thereof without using care and time to properly market the same it will result in serious loss that could otherwise be avoided.

Wherefore, Debtor prays that the Court first consider the petition of the Debtor to reduce the interest on said claims as hereinafter set out and that the matter of payment be adjusted according to the Court's findings and in accordance with equity; that permission for the said Frank Bogart to foreclose his mortgages be denied; that the petition of Debtor for a reduction of interest on said claims be granted.

MILLER LAND AND LIVE-
STOCK COMPANY

By C. LIEBERT CRUM,
Its Attorney.

State of Montana,
County of Cascade—ss.

C. Liebert Crum, being first duly sworn on oath states: That he is the attorney for the Miller Land and Livestock Company, a corporation, and makes this affidavit on its behalf; that he has read the foregoing Answer to Petition of Frank [60] Bogart and Cross Petition of Debtor, knows the contents thereof and that the same are true to the best of his information, knowledge and belief.

C. LIEBERT CRUM

Subscribed and sworn to before me this 6th day of May, 1941.

[Seal] R. A. WAYMAN,
Notary Public for the State of Montana. Residing
at Great Falls, Montana.

My commission expires Dec. 6, 1941.

[Endorsed]: Filed May 7, 1941. C. R. Garlow,
Clerk. [61]

Thereafter, on May 7, 1941, Debtor's Cross Petition was duly filed herein, being as follows, to wit:
[62]

[Title of District Court and Cause.]

CROSS PETITION

The above named Farm Debtor respectfully shows to the Court:

I.

That this is a proceedings under Section 75, a to r, under the National Bankruptcy Act relating to Agricultural Debt. Adjustments and that Frank Bogart on March 25, 1940 secured the approval of a secured claim for \$150,000.00, with interest at the rate of six per cent per annum from October 1, 1937.

II.

That on October 27, 1939 the Court approved and confirmed the Proposal of the Petitioner which was for an extension only.

III.

That pursuant to said Proposal and Order Confirming the same, the said Frank Bogart elected to take ten per cent of the debt as his annual payment coming to him on December 1, 1940 and said creditor did on or about December 7, 1940, petition this Court to dismiss this proceedings or that it have permission to foreclose upon its security.

IV.

That on December 19, 1940, Debtor paid to the said Frank Bogart \$15,482.50 and the Court denied the petition of said creditor, stating that the Court was of the opinion that the payment should have equaled ten per cent of the indebtedness due at the time of the payment rather than ten per cent of the amount of principal and interest due at the time of the commencement of this proceedings. [63]

V.

That the claim of the creditor herein is based upon a debt secured by a first real estate mortgage upon property that at the commencement of this proceedings was worth greatly in excess of the amount of the said mortgage thereon. That since said time Debtor, to increase the value and productivity thereof in order to pay off the said Frank Bogart and the other creditors as soon as possible and to preserve to the petitioner its valuable equity in said property, has made extensive and valuable improvements of such real estate and has secured property, necessary and adequate equipment to increase the income therefrom. That it has been necessary to secure part of such equipment on credit.

VI.

That petitioner believes and therefore alleges that the said Frank Bogart has not been and is not acting in good faith toward petitioner and its other creditors in that his actions demonstrate that he would rather have the security he claims than the money due him. That by acquiring the security he would make a large unearned and unjust profit at the expense of Debtor and its unsecured creditors and that in an effort to bring about such result he has maintained and contemplates maintaining a series of vexatious, harassing and unfounded objections, petitions, motions and other proceedings whereby he hinders Debtor from refinancing, takes

the time of its management and causes unnecessary expense to the Debtor.

VII.

That since the said mortgage debt was created, Debtor and its predecessors in interest have paid to Frank Bogart in various capacities or to his predecessors in interest approximately \$220,000.00 in interest alone and petitioner is informed and believes and therefore alleges the fact to be that a payment of some \$20,000.00 in addition was required by and paid to the said Frank Bogart individually by E. L. Dana as a [64] condition precedent to reducing the interest upon said indebtedness from eight per cent to six per cent and to verbally promising to extend said mortgage.

VIII.

That considering the value of the security, the amount of the investment, the present money market and all the circumstances surrounding such investment, as well as the best interests of all of the parties, including the unsecured creditors of Debtor who have claims of approximately \$200,000.00, it is just, equitable and right that the Court should reduce the interest rate upon said claim from six per cent to three and one-half per cent per annum and that the Proposal heretofore made be modified accordingly insofar as the claim of Frank Bogart is concerned.

IX.

That such modification would not adversely affect any other creditor but would be of benefit to Debtor and such creditors.

X.

That recently your petitioner has acquired a large quantity of range in the form of various grazing permits on the Crow Indian Reservation in order to operate on a scale that petitioner believes will result in a larger net income than was possible to be obtained heretofore during this proceedings and is now engaged in securing adequate cattle and other livestock to stock said range and that to secure such stock your petitioner is required to use its resources to the fullest extent and, to secure proper credits therefor, it is necessary to tie up a considerable portion of its more liquid assets and that in the meantime it is not to the best interests of Debtor and its creditors to pay more interest than is absolutely necessary and that by presently conserving [65] its assets by reduction in interest rates as herein prayed for, Debtor believes and therefore alleges the fact to be that it will naturally lessen the time within which all creditors shall be paid.

Wherefore Debtor prays that the Court shall set a day for hearing this Petition and after notice to the said Frank Bogart of the issues herein involved and that the Court after being duly advised, make an order reducing the interest rate payable to the

said Frank Bogart from six per cent to three and one-half per cent per annum, or to such other rate as may to the Court seem proper, and that such order shall not only relate to future payments of interest on said obligation but to interest since the commencement of this proceedings.

MILLER LAND AND LIVESTOCK COMPANY

By C. LIEBERT CRUM,
Its Attorney.

State of Montana,
County of Cascade—ss.

C. Liebert Crum, being first duly sworn on oath states: That he is the attorney for the Miller Land and Livestock Company, a corporation, and makes this affidavit on its behalf; that he has read the foregoing petition, knows the contents thereof and that the same are true to the best of his information, knowledge and belief.

C. LIEBERT CRUM

Subscribed and sworn to before me this 7th day of May, 1941.

[Seal] R. A. WAYMAN,
Notary Public for the State of Montana. Residing
at Great Falls, Montana.

My commission expires Dec. 6, 1941.

[Endorsed]: Filed May 7, 1941. C. R. Garlow,
Clerk. [66]

Thereafter, on May 7, 1941, Order requiring Frank Bogart to show cause why debtor's Cross Petition should not be granted, was duly filed and entered herein, being as follows, to wit: [67]

[Title of District Court and Cause.]

ORDER

Upon reading and filing the hereunto annexed Cross Petition of the above named Debtor:

It Is Ordered, that a hearing be had thereon on the 23rd day of May, 1941, at the hour of 10 *am* o'clock A. M. of said day in the Court Room of Federal Building in Great Falls, Montana, and that Frank Bogart show cause at said time and place why said Cross Petition should not be granted.

The Clerk is hereby directed to make service of this Order and a copy of the said Answer and Cross Petition as soon as may be by mailing an attested copy thereof to Gunn, Rasch and Gunn, Attorneys for Frank Bogart, at their postoffice address in Helena, Montana.

Dated at Great Falls, Montana, this 6th day of May, 1941.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered May 7, 1941.
C. R. Garlow, Clerk. [68]

Thereafter, on June 12, 1941, Objections to Granting of Petition of Debtor for reduction of rate of interest on the Bogart Claim was filed herein, being as follows, towit: [69]

[Title of District Court and Cause.]

OBJECTIONS TO GRANTING OF PETITION
OF DEBTOR FOR REDUCTION OF RATE
OF INTEREST ON THE BOGART CLAIM

Now comes Frank Bogart and in response to the order to show cause why the petition of the debtor for a reduction in the rate of interest on the Bogart claim should not be granted, objects to the granting of such relief upon the grounds and for the reasons:

1. That said petition does not state facts sufficient to warrant the granting of such relief.
2. That the Court is without authority, power or jurisdiction to grant such relief.

Dated this 31 day of May, 1941.

FRANK BOGART

GUNN, RASCH AND GUNN

Attorneys for Frank Bogart.

[Endorsed]: Filed June 12, 1941. C. R. Garlow,
Clerk. [70]

Thereafter, on August 16, 1941, an Order Reducing Interest Rate on Claim of Frank Bogart was duly filed and entered herein, and is in the words and figures following, towit: [71]

[Title of District Court and Cause.]

The application of debtor for a reduction of interest on the Bogart claim, in the above entitled cause, is now before the court for consideration. The briefs for and against the application have been carefully considered, and as a result, the court is now convinced that the application of debtor presents a proper case for allowance of a reduction of interest, and that the court has authority to entertain such request; consequently, in the opinion of the court, the interest rate on the above claim should be reduced to 4% per annum, and it is so ordered.

CHARLES N. PRAY

Judge.

[Endorsed]: Filed & entered Aug 16 1941. C. R. Garlow, Clerk. By C. G. Kegel Deputy Clerk. [72]

Thereafter, on September 5, 1941, a Notice of Appeal was duly filed herein, being in the words and figures following, to wit: [73]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Frank Bogart, a creditor, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order made and entered herein on the 16th day of August, 1941, re-

ducing the rate of interest on the claim of Appellant.
to four per cent per annum.

Dated this 4th day of September, 1941.

GUNN, RASCH AND GUNN

Attorneys for Appellant, Frank
Bogart.

By M. S. GUNN

A Member of said Firm.

Address: Helena, Montana.

[Endorsed]: Filed Sept 5, 1941. C. R. Garlow,
Clerk. [74]

Thereafter, on September 8, 1941, Statement of
Points upon which Appellant intends to rely on
appeal, was duly filed herein, and being as follows,
towit: [75]

[Title of District Court and Cause.]

STATEMENT OF POINTS

upon which Appellant intends to rely on the appeal
herein from the order reducing the rate of interest
on Appellant's claim to four per cent, filed and en-
tered on August 16, 1941, to-wit:

1. That the Court was without jurisdiction to
reduce the rate of interest on the Bogart claim to
four per cent, as it appears that the value of the
property mortgaged as security for the payment
of the claim is largely in excess of the indebtedness.

2. That the petition for the reduction of the

rate of interest does not state facts sufficient to authorize such reduction.

Dated this 6th day of September, 1941.

GUNN, RASCH & GUNN,

Attorneys for Frank Bogart,
Appellant,

By M. S. GUNN

A Member of said Firm.

Address: Helena, Montana.

[Endorsed]: Filed Sept 8, 1941. C. R. Garlow.
Clerk. [76]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of Montana

County of Lewis and Clark—ss.

M. S. Gunn, being first duly sworn, deposes and says: That he is a member of the firm of Gunn, Rasch and Gunn. That on the 6th day of September, 1941, he served a true and correct copy of the attached Statement of Points upon which Appellant intends to rely upon the appeal, upon the Miller Land and Livestock Company, above-named Debtor, by depositing the same in the Post Office at Helena, Montana, inclosed in a sealed envelope, with the necessary postage thereon, addressed to E. Liebert Crum, Attorney for said Miller Land and Livestock Company, at Parkman, Wyoming, his post office ad-

dress, as appears from the records and files in said matter.

M. S. GUNN

Subscribed and sworn to before me this 6th day of September, 1941.

(Notarial Seal) A. A. MAJOR

Notary Public for the State of Montana Residing at
Helena, Montana.

My commission expires Feb. 28, 1943. [77]

Thereafter, on September 10, 1941, Designation of Portions of Record on Appeal, with Affidavit of service thereof, was duly filed herein, being as follows, towit: [78]

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD
TO BE CONTAINED IN RECORD ON AP-
PEAL.

Whereas, Frank Bogart has taken an appeal to the Circuit Court of Appeals for the Ninth Circuit from the order filed and entered August 16, 1941, reducing the rate of interest on his claim, as allowed, to four per cent per annum:

Now, therefore, in accordance with Rule 75 of the Rules of Civil Procedure for the District Courts of the United States, there is hereby designated the portions of the record to be contained in the record on appeal, as follows:

1. Proposal of Debtor.
2. Order or judgment approving and confirming proposal, dated October 27, 1939.
3. Claim of Frank Bogart.
4. Order approving Bogart claim, dated March 25, 1940.
5. Petition of Bogart for order directing debtor to show cause why mortgages securing Bogart claim should not be foreclosed, filed December 9, 1940.
6. Return of Debtor to order to show cause issued on petition of Bogart, filed January 3, 1941.
7. Order and decision that payment made by Debtor should have been 10% of principal and interest of Bogart claim at time of payment, filed April 7, 1941. [79]
8. Petition of Bogart for order directing Debtor to pay balance within a reasonable time or show cause why mortgages securing Bogart claim should not be foreclosed, filed April 29, 1941.
9. Order requiring Debtor to show cause, filed April 29, 1941.
10. Answer and Cross-Petition of Debtor, filed May 7, 1941.
11. Separate Cross-Petition of Debtor, filed May 7, 1941.
12. Order requiring Bogart to show cause, filed May 7, 1941.
13. Objections to granting of petition for reduction of interest on Bogart claim, filed June 12, 1941.
14. Order reducing rate of interest on Bogart claim to 4% per annum, filed and entered August 16, 1941.

15. Notice of Appeal to Circuit Court of Appeals, from order reducing interest on Bogart claim.

Dated this 6th day of September, 1941.

GUNN, RASCH AND GUNN,
Attorneys for Frank Bogart,
Appellant,

By M. S. GUNN

A member of said firm.

Address: Helena, Montana.

[Endorsed]: Filed Sept 10, 1941. C. R. Garlow,
Clerk. [80]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of Montana

County of Lewis and Clark—ss.

M. S. Gunn, being first duly sworn, deposes and says: That he is a member of the firm of Gunn, Rasch and Gunn. That on the 6th day of September, 1941, he served a true and correct copy of the attached designation of portions of the record to be contained in the record on appeal upon the Miller Land and Livestock Company, above-named Debtor, by depositing the same in the Post Office at Helena, Montana, inclosed in a sealed envelope, with the necessary postage thereon, addressed to E. Liebert Crum, Attorney for said Miller Land and Livestock Company, at Parkman, Wyoming, his post office

address, as appears from the records and files in said matter.

M. S. GUNN

Subscribed and sworn to before me this 6th day of September, 1941.

(Notarial Seal) A. A. MAJOR

Notary Public for the State of Montana Residing at Helena, Montana.

My commission expires Feb. 28, 1943. [81]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD

United States of America,
District of Montana—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to The Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 82 pages, numbered consecutively from 1 to 82 inclusive, is a full, true and correct transcript of all portions of the record and proceedings designated by the parties as the record on appeal in case Number 3406, In the Matter of Miller Land and Livestock Company, Debtor, as appears from the original records and files of said court in my custody as such Clerk.

I further certify that the costs of said transcript amount to the sum of Seventeen and 65/100ths

(\$17.65) Dollars and have been paid by the appellant.

Witness my hand and the seal of said court at Great Falls, Montana, this 6th day of October, A. D. 1941.

(Seal) C. R. GARLOW,
Clerk of U. S. District Court,
District of Montana.

By C. G. KEGEL
Deputy Clerk. [82]

[Endorsed]: No. 9946. United States Circuit Court of Appeals for the Ninth Circuit. Frank Bogart, Appellant, vs. Miller Land and Livestock Company, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Montana.

Filed October 9, 1941.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States District Court for the District
of Montana (Billings Division)

U. S. C. C. A. No. 9946

In the Matter of MILLER LAND AND LIVE-
STOCK COMPANY,

Debtor.

ADOPTION OF DESIGNATION OF PORTIONS
OF THE RECORD AND STATEMENT OF
POINTS FILED IN THE DISTRICT
COURT OF MONTANA FOR THE PUR-
POSE OF PRINTING THE RECORD.

The Appellant, Frank Bogart, hereby adopts as the designation of the portions of the record to be printed and considered on the appeal and the statement of the points on which he intends to rely on the appeal, the statement of points and designation of parts of the record, copies of which are contained in the certified transcript and served and filed in the District Court pursuant to Rule 75 of the Rules of Civil Procedure for the District Courts of the United States.

Dated this 8th day of October, 1941.

GUNN, RASCH AND GUNN,

Attorneys for Frank Bogart,

Appellant,

By M. S. GUNN

A Member of said Firm.

Address: Helena, Montana.

[Endorsed]: U. S. B. T. A. Filed Oct. 10, 1941.
Paul P. O'Brien, Clerk. [83]